

BOARD OF VETERINARY MEDICAL EXAMINERS

Minutes

Date: April 19, 2006

Time: 9:00 a.m., C.S.T.

Location: Big Tennessee Room
Ground Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37247-1010

Members Present: Leland Davis, D.V.M., President
C. Maben Thompson, D.V.M., Secretary
Thomas Edmonds, D.V.M.
Mary Welch, D.V.M., Vice-President
Marie Gordon, Consumer Member
Robbie Bell, HRB Director, Ex-officio Member

Members Absent: Jerry Wilhite, D.V.M.
Mary Ann Grell, L.V.M.T.
Ron Wilson, D.V.M., Ex-officio Member

Staff Present: Lisa Lampley, Board Director
Rita Buckner-Shelton, Board Administrator
Nicole Armstrong, Advisory Attorney
Robert Taylor, D.V.M., Board Consultant/Inspector

A roll call vote was taken and upon determination of a quorum being present, the Board meeting was called to order by Dr. Davis at 9:12 a.m.

Approval of Minutes

After reviewing the minutes from the February 16, 2006 board meeting, Dr. Welch motioned to approve the minutes as presented. Dr. Thompson seconded the motion. The motion carried.

Conflict of Interest Policy

Ms. Nicole Armstrong, Advisory Attorney, reviewed the conflict of interest policy with the Board members.

Progress Report – Mary Ensminger, DVM

As per the terms of the Order ratified by the Board on April 20, 2005, Dr. Ensminger appeared before the Board to present proof of continuing education and other requirements for maintaining licensure.

Rules Status Report

Mr. Jerry Kosten, Regulations Manager, reported that a rulemaking hearing was held on April 17, 2006 regarding acceptable livestock management practices and stays and reconsiderations of disciplinary orders. He reported that the following were in attendance at the rulemaking hearing: Ms. Dee Ann Walker, TVMA Executive Director; Mr. Charles L. Hulsey, TWHBEA Executive Director; and Mr. Stan Butt, “VOICE” Magazine Editor. He stated that thirty-seven (37) written comments and no oral comments were received at the rulemaking hearing and that a written response would be sent to all individuals who submitted a written comment. The Board then reviewed copies of the submitted letters.

Mr. Charles Hulsey, Executive Director, Tennessee Walking Horse Breeders’ and Exhibitors’ Association (TWHBEA), addressed the board regarding the proposed rule language as pertains to equine breeding operations. Mr. Hulsey expressed concerns that the proposed language as written would jeopardize Tennessee’s ability to compete with other states for attracting new and maintaining existing livestock breeding operations and would place an undue financial burden on breeders. He stated that it was imperative that the designation of equine being recognized as animal agriculture be maintained and that the rules represent all animals equally. Mr. Hulsey thanked the board for their time and attention.

Mr. Stan Butt, Editor, “VOICE” Magazine, a publication for the Tennessee Walking Horse Association, addressed the board regarding the proposed rule language as pertains to equine. He stated that a major concern was the differentiation between equine and food animals. He stated that a horse is a food animal and that distinguishing a difference between the two would create a public relation problem and be economically detrimental to veterinarians. He questioned the reason for “changes to what has been an accepted livestock management practice for years”. He further stated that most breeding operations have a good working relationship with their veterinarian and that the breeding farm manager should be able to make the decision of when the services of a veterinarian are needed. Mr. Butt expressed his appreciation for the opportunity to voice concerns regarding the proposed rules.

Dr. Allan Holladay, DVM, representing the Tennessee Veterinary Medical Association (TVMA), also addressed the board regarding the proposed rule language. Dr. Holladay stated that the Board of Veterinary Medical Examiners is obligated to protect the welfare of the public and the welfare of the animals. He stated that a “horse *is* a different animal from a cow”. He also stated that under existing laws/rules rectal palpation is a diagnostic procedure that is considered the scope of practice of veterinary medicine and is to be performed by a licensed veterinarian. Dr. Holladay also summarized in part the position statement of the American Association of Equine Practitioners in that “AI (artificial insemination) should be performed by a licensed veterinarian or under the direct supervision of a licensed veterinarian” and that “...other named procedures including, but not limited to, palpation per rectum and ultrasound examination...”, should only

be performed by a licensed veterinarian”. Dr. Holladay thanked the Board for their time and attention.

Mr. Walter D. Chism, Horse Breeder/Owner, also addressed the Board and expressed concerns pertaining to the proposed rule language as relates to equine breeding. He stated that “equine species should not be separated from other livestock” and that “equine-breeding activities never had and should not require any veterinary supervision”. He questioned the effect the proposed rules would have on the smaller breeding operations. Mr. Chism endorsed the administration of veterinary prescription drugs by a veterinarian and asked that the Board take action which would make it legal for the breeders to perform procedures which they had been performing for years. Mr. Chism also expressed his appreciation for the opportunity to address the Board.

Mr. Wayne Avery, Shelbyville, TN, also addressed the board and raised the subject of equine dentistry. Mr. Avery stated that he had been in the horse business all his life and that equine dentistry had been performed by unlicensed people for hundreds of years. He stated that he floats teeth and had been taught to do so by “two of the best veterinarians in the state”.

The board thanked everyone for their attendance and their comments. Dr. Welch commented that the proposed rules will expand the options for breeders, not limit them, as the current rules do not allow for artificial insemination services to be performed by anyone other than a licensed veterinarian. The Board also reminded those present that no new rules or laws had been passed by the Board and that the current laws had been in place since 1967.

After review and discussion, a motion was made by Dr. Thompson to ratify the proposed rule changes as amended. The motion was seconded by Dr. Welch. The motion carried. The rule changes define as “accepted livestock management practices” those limited services which may be performed by persons who are not licensed as veterinarians and the type of supervision required for the provision of these services. “Indirect Supervision” is defined as services provided pursuant to written or oral instructions issued by a licensed veterinarian for the treatment of an animal or herd after the animal or herd has been examined by the veterinarian such that a valid doctor-client-patient relationship exists. The licensed veterinarian is not required to be on the premises for services that may be provided under indirect supervision, but must comply with the recordkeeping requirements of Rule 1730-1-.22. The rule change requires veterinarians providing written or oral instructions for persons who are not licensed as veterinarians and who are performing accepted livestock management practices to record the order, including specific information on the substance of the order and the date given, in the records of the animal. The rule changes also allow the Board to authorize the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to Rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Mr. Hulsey, TWHBEA Executive Director, was asked to submit to the board a list of procedures relative to the ratified rule changes that were still of concern to equine breeding operations. Dr. Davis and Dr. Thompson were selected to review the submitted list.

Mr. Kosten reviewed proposed rule changes regarding licensure fee increases and the examination fee for veterinary medical technicians. Ms. Lisa Tittle, Director of Fiscal Services, addressed the board regarding the current financial status of the board and the need for the

requested fee increases. She provided the Board a draft of the fiscal year ending June 30, 2006 financial report. The report reflected the following:

Cumulative Carryover @ June 30, 2005	-\$157,864.07
Projected Current Year Net @ June 30, 2006	4,950.23
Projected Cumulative Carryover @ June 30, 2006	-\$152,913.84

Ms. Tittle also provided the Board a chart of fee increase options. She stated that all boards are required to be self-sufficient and that current revenue was not enough to erase the current cumulative deficit in a timely manner. After review and questions, the board tabled the discussion and Dr. Davis requested a detailed study of board expenses to be presented at the next meeting. The proposed rule changes require that all examination applications and fees for the Veterinary Technician National Examination be sent directly to the American Association of Veterinary State Boards. Under current rules, the fee payment is submitted to the board with the licensure application and fees. Dr. Welch made a motion, seconded by Dr. Thompson, to authorize a rulemaking hearing regarding the examination fee for veterinary medical technicians. The motion carried. A hearing is scheduled to take place on June 23, 2006. Notices of rulemaking hearings are posted on the Internet and may be accessed via the Department of Health's home page.

The Board reviewed the rule amendments effective May 28, 2006 which will require applicants for initial licensure to submit a criminal background check. A \$25.00 replacement license or renewal certificate fee is also established.

Contested Case – Timothy Dalpiaz, D.V.M.

Dr. Timothy Dalpiaz, DVM, was present and was represented by Mr. Frank Scanlon. Ms. Brandi Bozarth, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Cara Harr. Dr. Dalpiaz appeared before the board on December 8, 2005 for a licensure interview. At this meeting, it was determined that Dr. Dalpiaz had engaged in the practice of veterinary medicine without a valid license. The board granted Dr. Dalpiaz a license with restrictions to practice veterinary medicine once certain conditions had been met. Dr. Dalpiaz consented in writing to the conditions and restrictions. Dr. Dalpiaz appeared before the board on February 16, 2006 having failed to meet all of the conditions for licensure as set by the board. Dr. Dalpiaz was unable to submit documentation of completion of a total of forty (40) hours of approved continuing education hours for calendar years 2004 and 2005. (A total of twenty-eight (28) approved continuing education hours for calendar years 2004 and 2005 was submitted.) The board denied the licensure and a request for a contested case hearing to challenge the decision to deny licensure was submitted by Dr. Dalpiaz. Ms. Lisa Lampley, Board Director, presented testimony regarding Dr. Dalpiaz's licensure file and the correspondence contained in the licensure file. Dr. Dalpiaz testified on his own behalf and presented proof of completion of twenty-nine (29) continuing education hours obtained March 16 – 19, 2006. Dr. Dalpiaz asked the board to approve a total of four (4) continuing education hours obtained in calendar years 2004 and 2005. Closing arguments were then presented by both sides.

Upon deliberation, Dr. Welch made a motion, seconded by Dr. Thompson, to accept the four (4) continuing education hours obtained in 2004 and 2005. The motion carried. A motion was then made by Dr. Welch, seconded by Dr. Thompson, to grant Dr. Dalpiaz a license with the following conditions: license to be placed on probation for a period of three (3) years; must

obtain an additional ten (10) hours of continuing education each year of probation; annual appearances before the Board; notify the board of any change in address, employment, or compliance with the term of probation; assessed costs of proceedings. The motion carried.

Contested Case – Mark Roberts, D.V.M.

Dr. Mark Roberts, DVM, was present and was represented by Mr. Dan Warlick. Ms. Brandi Bozarth, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Cara Harr. Dr. Roberts was charged with violating board orders by failing to submit reports regarding the status of his conviction appeals as per the Agreed Order of Suspension ratified by the Board on May 10, 2004. Ms. Lea Phelps, Disciplinary Coordinator, presented testimony regarding notification to Dr. Roberts of the requirement to submit the appeals status reports to the board's administrative office. Dr. Roberts, DVM, testified on his own behalf. Mr. Dan Warlick, attorney for Dr. Roberts, presented testimony from Dr. Carmen Stallman Nelson, DVM, former business partner and ex-wife of Dr. Roberts, regarding Dr. Roberts' practice of veterinary medicine. Dr. David Harris, DVM, testified on behalf of Dr. Roberts and agreed to provide supervision of Dr. Roberts if requested by the Board. Dr. Matthew Roberts, MD, brother of Respondent, testified on behalf of his brother. Mr. Ed Shirley, client/neighbor of Dr. Roberts also testified on behalf of Dr. Roberts. Also in attendance, were approximately twenty-five (25) clients/neighbors of Dr. Roberts who were willing to testify on Dr. Roberts behalf. Closing arguments were then presented by both sides.

Upon deliberation, the Board found the Respondent guilty of violating previous board orders. Dr. Edmonds made a motion to lift the suspension and place the license on probation for a period of five (5) years with the following conditions: must work under supervision for a period of three (3) years; must obtain forty (40) hours of continuing education hours each year for the next three (3) years to make up the deficit sixty (60) hours; annual appearances before board; assessed total civil penalties in the amount of \$300.00 and assessed costs of proceedings. Dr. Welch seconded the motion. The motion carried.

Contested Case – Joseph Tabery, D.V.M.

Dr. Joseph Tabery, DVM, was present and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Cara Harr. Dr. Tabery was charged with operating Norwood Veterinary Hospital without a premise permit from November 2004 to present. Dr. Tabery failed to submit proof of correction of deficiencies noted at the October 11, 2004 facility renewal inspection. Ms. Lampley, Board Director, presented testimony regarding the facility inspection and requests for documentation of proof of correction of the noted deficiencies. Dr. Tabery testified on his own behalf and acknowledged that he had deliberately not submitted the requested documentation of corrections even though he was in possession of such documentation.

Upon deliberation, the Board found the Respondent guilty of operating Norwood Veterinary Hospital without a premise permit. Dr. Welch made a motion, seconded by Dr. Edmonds, to issue an advisory censure to Dr. Tabery and assess total civil penalties in the amount of \$900.00 and costs of the proceedings. The motion carried, with Dr. Davis opposed.

Contested Case – Randy Cooke, D.V.M.

Dr. Randy Cooke, DVM, did not appear before the board and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge Cara Harr. Ms. Bozarth submitted proof that Dr. Cooke had been duly notified of the hearing and moved for default. The motion for default was granted.

Dr. Cooke was charged with violating previous board orders by failing to pay civil penalties and costs of proceedings as per the Order ratified by the Board on September 8, 2003. Ms. Bozarth presented a letter to the Board from Dr. Cooke and stated that a partial payment of civil penalties in the amount of \$2,825.00 had been received in her office on this date.

Upon deliberation, the Board found the Respondent guilty of violation of board orders. Dr. Thompson made a motion, seconded by Dr. Welch, to suspend Dr. Cooke's license to practice veterinary medicine until the current balance of assessed civil penalties and court costs had been paid and to assess additional total civil penalties in the amount of \$1,000.00 and costs of the proceedings. The motion carried with Dr. Edmonds opposed.

Agreed Order – William Hezel, D.V.M.

Dr. William Hezel, DVM, was not present and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, presented an Agreed Order to the Board for ratification. Dr. Hezel violated previous board orders by failing to pay costs of proceedings as per the Order ratified by the Board on May 18, 2004. Dr. Hezel will pay the assessed total costs in the amount of \$1,992.11, in six equal installments, to be paid over six months. Dr. Thompson made a motion, seconded by Dr. Welch, to accept the Agreed Order. The motion carried.

Consent Order – David Bennett, D.V.M.

Dr. David Bennett, DVM, was not present and was not represented by counsel. Ms. Brandi Bozarth, Assistant General Counsel, presented a Consent Order to the Board for ratification. Dr. Bennett operated a veterinary facility without a premise permit. Dr. Bennett was assessed total civil penalties in the amount of \$1,800.00 and was ordered to cease and desist from the practice of veterinary medicine until such facility permit is obtained. Dr. Welch made a motion, seconded by Dr. Thompson, to accept the Consent Order. The motion carried.

Consent Order – Larry Mangum, D.V.M.

Dr. Larry Mangum, DVM, was not present and was not represented by counsel. Ms. Nicole Armstrong, Assistant General Counsel, represented the State. Pursuant to a settlement agreement reached previously by the Board's screening panel, Ms. Armstrong presented a Consent Order to the Board for ratification. Dr. Welch recused herself. Dr. Mangum repeatedly administered a recalled drug that he was aware was recalled, and did not inform clients that the product had been recalled. Dr. Mangum was issued a Letter of Reprimand. Dr. Thompson made a motion, seconded by Ms. Gordon, to accept the Letter of Reprimand. The motion carried.

Consent Order – Denis B. Ryan, D.V.M.

Dr. Denis Ryan, DVM, was not present and was not represented by counsel. Ms. Nicole Armstrong, Assistant General Counsel, represented the State. Pursuant to a settlement agreement reached previously by the Board's screening panel, Ms. Armstrong presented a Consent Order to the Board for ratification. Dr. Welch recused herself. Dr. Ryan pled guilty in December 1999 to the misdemeanor offense of driving while impaired and failed to report the conviction. In September 2004, the Sevier Co. Animal Clinic, owned by Dr. Ryan, failed to release complete patient records to a client. Dr. Ryan was issued a Letter of Reprimand and his license placed on probation with the following conditions: must undergo a substance abuse evaluation by a licensed health care professional qualified to perform such evaluations; before undergoing the evaluation, the Respondent must submit, within fourteen (14) days of the Board's approval of the Consent Order, a list of at least three (3) qualified licensed health care professionals to the Board's administrative staff for approval; Board staff will inform Dr. Ryan of the approved health care professional; Dr. Ryan must complete the substance abuse treatment evaluation by the approved provider within sixty (60) days of the Board's approval of the Consent Order and ensure that a written report is submitted by the approved provider to the Board's administrative office within thirty (30) days of the evaluation; if report states no substance abuse treatment is required, Dr. Ryan must submit a petition to the Board for an Order of Compliance and personally appear before the Board at the next regularly scheduled meeting; if report states substance abuse treatment is required, the probation will continue and Dr. Ryan must comply with the recommended treatment; Respondent will remain on probation until a final written report of successful completion of treatment is submitted by the health care professional; Dr. Ryan shall personally appear before the board at the next scheduled meeting following the submission of the final written report to demonstrate successful compliance with all probationary conditions and to request an Order of Compliance; probation will be lifted upon issuance of Order of Compliance. Dr. Thompson made a motion, seconded by Ms. Gordon, to accept the Consent Order. The motion carried.

Amend Position Statement – Administration of Electronic Identification Device

Upon review of the Position Statement adopted by the Board on August 24, 2005, Dr. Welch made a motion to amend the second sentence of paragraph two (2) to read "The injection **must** be done by a licensed veterinarian or licensed veterinary medical technician under the employment and direct supervision of a licensed veterinarian." The original wording in the position statement read "*should*". Dr. Edmonds seconded the motion, the motion carried.

Discussion - American Association of Veterinary State Boards (AAVSB) Conference

The annual meeting is scheduled for September 15 – 17, 2006 in Kansas City, MO. Dr. Welch was designated to be the board member attendee/voting delegate at the 2006 conference. This conference is a valuable networking and learning opportunity with regulators and board members from around the country.

Office of General Counsel (OGC) Report

Ms. Nicole Armstrong, Advisory Attorney, reviewed the report with the Board. There is currently one set of rules under review at the Office of the Attorney General and a roll call vote scheduled for this meeting regarding accepted livestock management practices and stays and reconsiderations. The Office of General Counsel currently has thirty-seven (37) open cases pertaining to the Tennessee Board of Veterinary Medical Examiners.

Investigations and Disciplinary Report

Ms. Lea Phelps, Disciplinary Coordinator, reviewed the reports with the Board. There are currently sixty-one (61) open complaints in the Office of Investigations. An analysis of newly filed complaints categorized by allegation and month received and by geographical area and month received was included. The disciplinary report indicated that twenty-four (24) individuals are currently being monitored for compliance with Board orders.

Inspection Report

Ms. Lisa Lampley, Board Director, reviewed the inspection report. A total of one hundred twenty-seven (127) inspections were conducted during the period of December, 2005 – March, 2006.

Director's Report

Ms. Lampley informed the Board that Ms. Grell would be resigning from the Board and that Dr. Wilhite would no longer be able to perform any board member duties. There still has been no notification received regarding the replacement of Dr. Wilhite whose term on the board expired 08-01-05. The Veterinary Technician National Examination (VTNE) will be administered on June 16, 2006 to approximately thirty (30) candidates. Ms. Lampley spoke to the graduating veterinary technology students at Lincoln Memorial University on March 27th and to the students at Columbia State Community College on April 6, 2006. Ms. Lampley thanked the TVMA for the invitation to and the space provided at the 2006 Music City Veterinary Conference held March 17 – 19, 2006 in Franklin, TN. A positive experience once again! The Request for Proposals (RFP) for veterinary facility and animal control agency inspections in the three grand regions of the state were mailed on April 7, 2006. A total of fifty-seven (57) requests for the RFP were received. The proposal deadline is May 10, 2006. The current contracts expire June 30, 2006. The new contract will have an effective period of July 1, 2006 through June 30, 2009. Effective June 1, 2006, all applicants for initial licensure/certification will have to submit a criminal background check prior to issuance of a license/certificate. This information has been placed on the website and the schools have been notified of the new requirement. The following status report was provided:

Total Active Licensees as of March 31, 2006:

Veterinarians:	1,627
Veterinary Medical Technicians:	313
Veterinary Facilities:	579
Certified Animal Euthanasia Technicians:	162
Certified Animal Control Agencies:	42

Legislative Report

Ms. Lampley reviewed the status of the following legislation:

SB3937 – Designates artificial insemination of livestock as an accepted livestock management practice rather than veterinary medical service; requires Board of Veterinary Medical Examiners to refund all monetary fines and civil penalties imposed and collected in fiscal years 2004-2005 and 2005-2006 for artificial insemination of livestock without a veterinary medical license upon application of persons fined for such practice.

HB3342 – Specifies that artificial insemination of livestock is not a veterinary practice for which licensure is required.

Continuing Education Course Approval

The following requests for approval of continuing education hours were received:

A request from the **Airport Emergency Clinic** for approval of six (6) continuing education hours each for the following meetings to be held in Johnson City, TN on 03/05/06, 05/07/06, and 12/10/06. Topics will include: Diabetes in Dogs and Cats; Diagnosis and Treatment of Hyperadrenocorticism in Dogs and Cats; Canine and Feline Hyperthyroidism; Diagnosis and Management of Acute and Chronic Vomiting in Dogs and Cats; Diagnosis and Management of Acute and Chronic Diarrhea; Updates on Liver Disease and Canine and Feline Gastroenterology; and Avoiding the Malpractice Mess.

A request from **Laura M. Arnold, DVM** for approval of five (5) continuing education hours for attendance at the **Tennessee Grazing Conference** held on February 3, 2005 and the **Sweetwater Valley Feeder Calf Improvement Workshop** held on February 26, 2005.

A request from **Dan Woodard, DVM** for approval of six (6) continuing education hours for courses entitled **“Molecular Genetics”** and **“Physiological Chemistry”**. These courses are being taken at Tennessee Technological University.

A joint request from **Elanco** and **Tyson** for approval of eleven (11) continuing education hours for a meeting entitled **“Tyson and Elanco Tech 2 Tech Meeting”** to be held May 1-4, 2006 in Washington DC. (Four (4) of the total hours requested would be in practice management.)

A request from **JOVP.COM (Journal of Veterinary Practice)** for approval of continuing education credit with successful completion of post-experience examination. This Internet web magazine is dedicated to veterinary practice management.

A request from **Pfizer Animal Health** for approval of two (2) continuing education hours for a meeting on “Leptospirosis Awareness” to be held April 17, 2006 in Germantown, TN.

A motion to deny the request received from Laura M. Arnold, DVM and the request received from Dan Woodard, DVM, was made by Dr. Davis and seconded by Dr. Welch. The motion carried. A motion to accept all other courses was made by Dr. Davis and seconded by Dr. Welch. The motion carried.

The following waivers of continuing education hours were reviewed and granted by the board:

Robert A. Alexander, DVM – Waiver of continuing education hours for calendar year 2005.

Gail S. Brawner, DVM – Approval of continuing education hours obtained through correspondence courses and internet interactive courses for calendar year 2005.

File Review/Ratification

Upon review, the Board moved to ratify all newly licensed/certified or reinstated veterinarians, veterinary medical technicians, veterinary facilities, certified animal euthanasia technicians, and certified animal control agencies.

Correspondence

The Board reviewed all correspondence.

Adjournment

There being no further business to discuss, Dr. Edmonds made a motion, seconded by Dr. Welch, to adjourn. The motion carried and the meeting was adjourned at 5:53 p.m.

C. Maben Thompson, DVM, Secretary

Date